

89- 1382 (1)

Supreme Court, U.S.

FILED

DEC 4 1989

JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

October, 1990

* * *

JAMES D. FREED,

PETITIONER

V.

THE UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT, CINCINNATI, OHIO,

RESPONDENT

* * *

PETITION

FOR WRIT OF MANDAMUS
RE THE 9/20/89 MANDATE OF DISMISSAL
OF APPEAL NO. 88-2264

* * *

"IN RE" James D. Freed
3370 Fourth Street
Twin Lake, MI 49457
616/828-4395

25P



QUESTIONS PRESENTED

(1) Can the named Respondents dismiss (sand bag) appeal No.88-2264 with sanctions, under color of Rule 38 FRAP and inapplicable case law(i.e.Schiff v Simon and Schuster Inc. 766 F 2d 61,62,2 Cir.1985) when said "dismissal abridges my unqualified Title 28 USC Section 2072 substantive right to due process of law/right to appeal ?

(2) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal" abridges my unqualified Rule 4 FRAP substantive "APPEAL AS OF RIGHT" ?

(3) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal" abridges my unqualified First Amendment Right to freedom of speech and freedom of the press ?

(4) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal" abridges my unqualified 9th Amendment Right to freedom of speech and freedom of the press ?

(5) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inaplicable case law (Sciff supra) when said "dismissal" abridges my unqualified Preamble To The Bill Of Rights Right to defend against IRS Misconstruction And Abuse Of Power ?

(6) Is Respondents' claim of discretion to dismiss Appeal No.88-2264, pursuant to Rule 38 FRAP and Schiff (supra), a misconstruction and abuse of power ?

(7) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal"

abridges my right as a citizen to be free from sanctions as mandated by U.S. v Texas, 384 US 155; Wilson v U.S., 221 US 361; and Pollack v Flint, 158 US 601, 157 U.S. 429; ? (see attached Memorandum Of Law)

(8) Is Rule 38 FRAP repugnant to the Constitution and therefore NULL and VOID pursuant to the constitutional principles as adopted in Marbury v Madison 5 US (2 Cranch) and therefore unconstitutional ?

(9) Is the 14th Amendment to the United States Constitution repugnant to said Constitution and therefore NUL and VOID pursuant to the challege in the attached "AFFIDAVIT OF STATUS" ?

(10) The foregoing constitutional, statutory and judicial questions demand full judicial cognizance pursuant to this Court's Appellate Jurisdiction.

PARTIES

Petitioner James D.Freed, a sovereign citizen of the State Of Michigan living and domiciled in Muskegon County Michigan, is hereby appearing In Propria Personna.

Respondent LIVELY is Senior Circuit Judge for the United States Court Of Appeals, Sixth Circuit, 538 U.S.Post Office and Courthouse Building in Cincinnati, Ohio.

Respondent Merrit is a Circuit Judge for the United States Court Of Appeals, Sixth Circuit 538 U.S.Post Office and Courthouse Building, Cincinnati, Ohio, 45202-3988.

Respondent Martin is a Circuit Judge for the United States Court Of Appeals, Sixth Circuit 538 U.S.Post Office and Courthouse Building, Cincinnati, Ohio. 45202-3988

Respondent Leonard Green is Clerk for the United States Court Of Appeals, Sixth Circuit 538 U.S.Post Office and Courthouse Building, Cincinnati, Ohio, 45202-3988.

PETITIONER'S AFFIDAVIT

OF NONTAXPAYER STATUS

STATE OF MICHIGAN)
) SS
COUNTY OF MUSKEGON)

KNOW ALL MEN BY THESE PRESENTS:-

THAT I, James D. Freed, Petitioner/Affiant

hereby deposes and says:-

THAT "The revenue laws are a code or system in regulation of tax assessment and collection. They relate to TAXPAYERS and not to NONTAXPAYERS. With them Congress does not assume to deal, and they are neither of the SUBJECT nor of the OBJECT of the revenue laws" First Nat'l Bank Emlenton Pa. v U.S. 161 F Supp. 847(DC WD Pa. 3 Cir.1958)
(emph.added)

THAT I am a citizen of the State Of Michigan which State is one of the several sovereign United States Of America.

THAT I am living and domiciled in the County of Muskegon, outside of the Territorial Jurisdiction of the Internal Revenue Service as denoted in Article 1, Section 8, Clause 17 of the United States Constitution.

THAT There is no Section of the Internal Revenue Code (Title 26) that imposes a tax upon me and/or my common law nontaxable activity of "sign artist"; or that makes me and/or my activity liable for any tax.

THAT My "nontaxable activity compensation" is derived from sources within the United States.

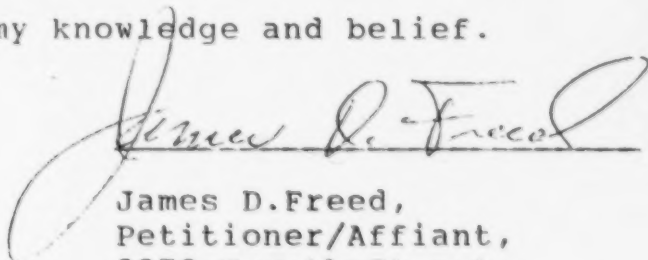
THAT I am not now, nor have I ever been engaged in the making, production or keeping of articles or objects subject to tax; nor am I now, nor have I ever been engaged in any revenue taxable activity/event such as the importing, manufacturing or sales of distilled spirits, tobacco products, tires, chemicals, seabed minerals, sportsfishing equipment, hazardous waste or petroleum products etc. as denoted in 26 USC Subtitles A, D, or E.

THAT I am not a non-resident alien as denoted in 26 USC Section 871, the unconstitutional 14th Amendment notwithstanding; nor am I a foreign corporation as denoted in

26 USC Section 881, the unconstitutional
14th Amendment notwithstanding.

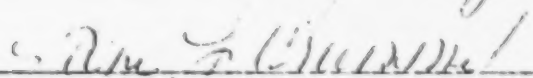
THEREFORE Relying on the foregoing deposed
statements I hereby claim the lawful status
of NONTAXPAYER.

I, James D. Freed, the Petitioner/Affiant,
hereby declares and affirms that all of the
foregoing statements are true and accurate
to the best of my knowledge and belief.



James D. Freed,
Petitioner/Affiant,
3370 Fourth Street,
Twin Lake, Michigan,
49457
616-828-4395

Subscribed and sworn to before me
this 22 day of January 1990


Notary Public, Muskegon County,

My Commission expires 11-17-92

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JUDICIAL NOTICE

The Court will please take judicial notice that the Petitioner, relying on the case of Echoles v Voisene, has made necessary corrections in this instant Petition For Writ Of Mandamus.

"Pro se litigants cannot be held to the same rigid standards that an attorney can be....."
Echoles v Voisene 506 F Supp. 15;

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

JAMES D.FREED

PETITIONER

VS

SENIOR CIRCUIT JUDGE LIVELY
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT,CINCINNATI,OHIO, RESPONDENT

VS

CIRCUIT JUDGES MERRIT AND MARTIN
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT,CINCINNATI,OHIO, RESPONDENT

VS

LEONARD GREEN, CLERK
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT,CINCINNATI,OHIO, RESPONDENT

PETITION FOR WRIT OF MANDAMUS
AGAINST RESPONDENTS LIVELY,MERRIT,MARTIN AND
GREEN FOR THEIR SEPTEMBER 20th,1989 MANDATE
OF DISMISSAL OF THIS PETITIONER'S APPEAL NO.

88-2264

PROCEEDING BELOW

On the date of September 20/89 the named Respondents of the Sixth Circuit Court Of Appeals MANDATED (see Appendix Ex.A) the dismissal of my appeal No.88-2264 under color of Rule 38 FRAP and inapplicable case law (Schiff supra).

This Petitioner alleges that Respondents' "mandate of dismissal" was an unlawful and unconstitutional action to prevent said Appeal No.88-2264 from review by this Court thus doing violence to this Court's Appellate Jurisdiction and to this Petitioner's substantive "APPEAL AS OF RIGHT".

JURISDICTION OF THE COURT

The United States Supreme Court has jurisdiction to grant this Petition For Writ Of Mandamus against the named Respondents of the United States Court Of Appeals, Sixth Circuit, Cincinnati, Ohio pursuant to Title 28, USC, Section 1651(a).

JURISDICTION C'T'D

On the date of May 30th 1989 said Sixth Circuit Respondents dismissed Appeal No.88-2264 under color of Rule 38 FRAP and inapplicable case law (i.e.Schiff v Simon and Schuster In, 766 F 2d 61,62,2 Cir.1985) absent the Court Seal as required by Title 28 USC Section 1691 which leaves said "dismissal"a nullity.

On the date of June 9/89 this Petitioner filed an Application For Reinstatement.

On the date of August 4/89 said Respondents denied said Application For Reinstatement, absent the Court Seal required by Sec.1691.

On the date of August 11/89 this Petitioner filed a Motion For Rehearing.

On the date of September 5/89 Respondents denied the Motion For Rehearing absent the Court Seal required by Section 1691.

On the date of September 14/89 this Petitioner filed an OBJECTION to the September 5th, 1989 "denial".

On the date of September 20th 1989 the said Respondents MANDATED the dismissal of May 30 1989 and which "MANDATE" was stamped "True Copy" and signed by Deputy Clerk Tom Bennignus. (see Appendix Ex.A)

On the date of September 29th 1989 this Petitioner filed a Notice Of Appeal in the United States Court Of Appeals, Sixth Circuit, Cincinnati, Ohio. (Appendix Ex.B)

On the date of October 3/89 the Deputy Clerk for said Sixth Circuit sent Petitioner a letter claiming that Congress had abolished appeals to the United States Supreme Court. (Appendix Ex.C)

Petitioner submits the following case law in support of jurisdiction re the Rights claimed in the foregoing QUESTIONS PRESENTED on pages i, ii, and iii:-

"Mandamus lies to enforce an established right, for the invasion of which no other specific legal remedy exists"
Marbury v Madison 1 Cranch 137

CONSTITUTIONAL PROVISIONS

The United States Supreme Court has Appellate Jurisdiction under Article III, United States Constitution -

Section 1 "The judicial Power of the United States, shall be vested in one supreme Court, and....."

Section 2 "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution....."

STATEMENT OF THE CASE

This instant matter began when IRS agent Patrick Finnegan of Muskegon, Michigan, ABSENT HIS LETTER OF DELEGATED AUTHORITY as required by TITLE 26 USC SECTION 7803(a)(b)(1)(2) seized two of my checks totalling \$351.80 (with threats of more massive seizures) and which checks were owed to me for services rendered to two of my customers. This unlawful seizure (theft) was made in spite of the fact that, over a period of several months, an assortment of IRS agents had repeatedly maintained "silence" when I had repeatedly requested "proof" that I am

\ a "person required" to file returns and pay a tax.

Since the IRS chose not to respond to my numerous requests, I concluded that I am not a "person required" and I subsequently filed a "notice" of tax exempt status with the Registrar Of Deeds in Muskegon, Michigan and which "notice" was a result of their tacit agreement (silence) that I am not a "person required". (Appendix Ex.D)

So in response to Agent Finnegan's seizure of my funds (theft) I filed Civil Complaint No.88-24161-AZ (jury demanded) in the Muskegon County Circuit Court in Muskegon Michigan on the date of August 2,1988 naming Patrick Finnegan and five other officials as defendants-----unlicensed Circuit Court Judge Michael E.Kobza presiding.

Unlicensed Judge Kobza dismissed said Complaint with prejudice (without a hearing) on the date of August 15,1988. However, on the day following the dismissal (August 16/88) unlicensed AUSA Janice Kittel Mann of Kalamazoo, Michigan unlawfully removed the "dis-

missed" Complaint to the United States District Court in Kalamazoo, Michigan under color of alleged "bar" number and relying on inapplicable statutes.

The unlawfully removed Complaint was filed under District Court NO.6-88-607CA6 to be adjudicated by U.S.District Court Judge Richard A.Enslen who lacked territorial jurisdiction over the unlawfully removed Complaint.

On the date of August 26,1988, I filed an Amended Complaint in said District Court to include said Judge Michael E.Kobza and AUSA Janice Kittel Mann as Defendants, suing them for lack of jurisdiction since neither of them possessed the license to practice law as required by Michigan Law MCL 600..916. (NOTE: Judge Kobza's "Order Of Dismissal" was based upon a TAXPAYER'S obligation and not upon this Petitioner's NONTAXPAYER status.)

Subsequently there was an exchange of Motions,Objections and Orders etc as enumerated in the attached Docket Sheet(Appendix Ex.E)

which includes my Objection to the unlawful removal of my Complaint.

Following the dismissal, by District Court Judge Richard A. Enslen, of my "ALREADY DISMISSED" Complaint, I filed a Notice Of Appeal with the United States Court Of Appeals Sixth Circuit, Cincinnati, Ohio on the date of September 29, 1988. My Appeal Brief presented a total of 23 issues and a statement with argument, (see Appendix Ex.F, 32 pages). Since the Government's scheme is to remain "silent" re the 23 issues as raised in my Appeal Brief, said Government filed a Motion To Dismiss based upon the unconstitutional Rule 38 FRAP and upon the aforesaid inapplicable case law. (Schiff supra)

The Respondents granted the Government's Motion To Dismiss on the date of May 30/89. As previously shown, on the date of June 9/89 I filed an Application For Reinstatement.

On the date of August 4/89 my Application For Reinstatement was denied.

On the date of August 11/89 I filed a Motion For Rehearing which was denied on the date of Septmber 5/89.

On the date of September 14/89 I filed an Objection to the Order of September 5/89 which was answered by the Government on the date of September 20/89 with a MANDATE Of Dismissal of my appeal No.88-2264, and which MANDATE is the subject of this instant Petition For Writ Of Mandamus.

REASONS FOR GRANTING WRIT

Title 28 USC Section 2072 states (in part):-

"Such rules shall not abridge,
enlarge or modfy any substantive
right" (emph.added)

The Sixth Circuit Respondents,United States Court Of Appeals,Cincinnati,Ohio have abridged this Petitioner's 9th Amendment substantive right to appeal the matter of:-

"James D.Freed v United States of America,Patrick Finnegan,Unknown IRS Agent,John O.Hummel, E.P. Erickson,Douglas W.Hillman, and John A.Smietanka, (County Court No. 88-24161-AZ; District Court No. 6-88-607CA6; and Appeals Court No. 88-2264"

by their Mandate Of Dismissal of Appeal No.

88-2264 under color of Rule 38 FRAP and inapplicable case law; said Mandate Of Dismissal being a ploy to avoid/prevent an embarrassing Appellate Court and Supreme Court review of the 23 issues as presented in this Petitioner's Appeal Brief.

Should this Supreme Court grant this instant Petition For Writ Of Mandamus said grant would support Petitioner's 9th Amendment Right to proceed with Appeal No.88-2264 and justice will be served. However, if the Writ of Mandamus is not granted to command the Respondents to vacate all orders and to reinstate Appeal No.88-2264 then this Petitioner will be forced to suffer irreparable Constitutional injury, the Government will be allowed and encouraged to remain fraudulently "silent" regarding the 23 issues in my Appeal Brief, which "silence" is contrary to the teachings of U.S. v Tweek 550 F 2d 297, 299-300(1977), and this Court's Appellate Jurisdiction will suffer violence.

MEMORANDUM OF LAW

"The citizen is immune, has a right to be free from such taxation, and regulations, duties, obligations, SANCTIONS as a matter of law" (emph. added)
U.S. v Texas, 384 U.S. 155; Wilson v U.S. 221 U.S. 361; Pollack v Flint 158 U.S. 601; 157 U.S. 429;

and

"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading..... we cannot condone this shocking conduct by the IRS (emph. added)
United States v Tweel 550 F 2d 297, 299-300(1977);

and

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgements..(emph. added)
U.S. v Throckmorton 98 US 61

and

".....but insisting that it was vitiated by fraud, which vitiates everything" (emph. added)
Boyce's Executors v Grundy 3 Peters 210-221 7 L. Ed. 655

REMEDY SOUGHT

WHEREFORE since the Government's "SILENCE" equates with fraud, and since fraud vitiates the Respondents' Mandate of September 20/89 and all former orders and since Rule 38 FRAP abridges my 9th Amendment substantive

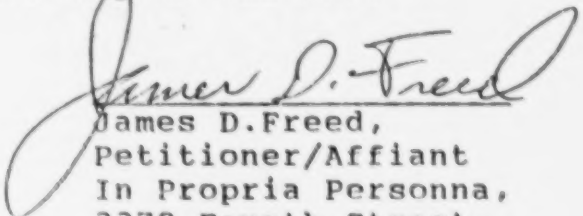
right to appeal, and since this Court has agreed that citizens are immune from sanctions as a matter of law, then this Petitioner requires that, in order to reserve his 9th Amendment Right to perfect his appeal and to preserve this Court's Appellate Jurisdiction, that this Honorable United States Supreme Court grant this instant Petition For Writ Of Mandamus against the herein named Respondents commanding them to vacate the Mandate of September 20/89 and all other orders and to reinstate Appeal No.88-2264 forthwith.

The Petitioner having raised such timely objections and having them denied now concludes that he has no other adequate remedy at law and is therefore entitled entitled to a Writ Of Mandamus against the herein named Respondents of the United States Court Of Appeals, Sixth Circuit, Cincinnati, Ohio.

AFFIDAVIT

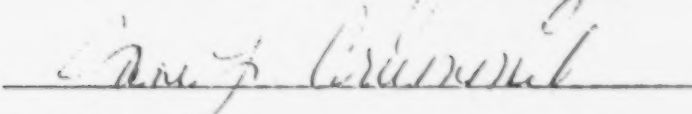
IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

I, James D Freed, the Petitioner/affiant
hereby declares and affirms that all of the
foregoing statements contained in this inst-
ant Petition For Writ Of Mandamus are true
and correct to the best of my knowledge and
belief and understanding of the law.


James D. Freed,
Petitioner/Affiant
In Propria Personna,
3370 Fourth Street,
Twin Lake, Michigan,
49457

Subscribed and sworn to before me

this 22 day of January 1990



Notary Public, Muskegon County,

My Commission expires 11-17-92.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

JAMES D.FREED,	)	PETITION
)	
PETITIONER,	)	FOR WRIT OF
)	
VS	)	MANDAMUS
)	
SENIOR CIRCUIT JUDGE LIVELY,	)	AGAINST THE
)	
CIRCUIT JUDGES MERRIT AND	)	SIXTH
)	
MARTIN and CLERK LEONARD	)	CIRCUIT
)	
GREEN, UNITED STATES COURT OF	)	RESPONDENTS
)	
APPEALS, SIXTH CIRCUIT,	)	OF THE
)	
CINCINNATI, OHIO,	)	U.S.COURT
)	
RESPONDENTS,	)	OF APPEALS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of this Petition For Writ Of Mandamus has been served/mailed to the Respondents at 538 U.S.Post Office and Courthouse Bldg. Cincinnati, Ohio, 45202-3988.

Date Feb. 28/1990

James D. Freed
James D. Freed, Petitioner

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
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